

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

The Woodlands, Texas

THE WOODLANDS FIRE DEPARTMENT

Employer

and

Case No. 16-RC-10129

WOODLANDS PROFESSIONAL FIRE
FIGHTER ASSOCIATION LOCAL 3846,
IAFF

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full and/or part-time State certified firefighter employees employed by The Woodlands Fire Department.

EXCLUDED: All clerical staff and dispatchers, administrative and managerial employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. In this regard, Section 103.20(c) of the Board's Rules and Regulations, as interpreted by the Board, requires employers to notify the Regional Director at least five full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Failure to do so estops employers from filing objections based on nonposting of the election notice. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the

designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Woodlands Professional Fire Fighter Association Local 3846, IAFF.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list containing the **full names and addresses** of all eligible voters which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969); and *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the names and addresses of all the eligible voters shall be filed by the Employer with undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 16 Resident Office, Mickey Leland Federal Building, 1919 Smith Street, Suite 1545, Houston, Texas 77002, on or before August 12, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board,

addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570.

This request must be received by the Board in Washington by August 19, 1999.

DATED August 5, 1999, at Fort Worth, Texas.

/s/ Claude L. Witherspoon

Claude L. Witherspoon, Acting
Regional Director
NLRB Region 16

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1. The Petitioner and Employer did not file briefs in this matter.
 2. The parties stipulated, and I find, that The Woodlands Fire Department, Inc., is a Texas Corporation with a place of business located at The Woodlands, Texas where it is engaged in the business of providing fire fighting and emergency medical services. During the past twelve months, a representative period, the Employer, in the course and conduct of its business operations, has received gross revenues in excess of \$1,000,000 from the performance of the services specified above. During the same period of time, the Employer purchased and received goods and materials valued in excess of \$50,000. directly from points located outside the State of Texas.
 3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
 4. The Employer operates a fire department in The Woodlands, Texas. The Employer's managerial hierarchy is composed of a Fire Chief and two Deputy Fire Chiefs, who the parties stipulated, and I find, are supervisors within the meaning of Section 2(11) of the Act. The next classification in the hierarchy is battalion chief shift commander. The Employer contends that the battalion chiefs should be excluded from any unit found appropriate herein as they possess supervisory authority within the meaning of Section 2(11) of the Act. The Union takes the position that the battalion chiefs lack such authority and therefore seek their inclusion in the unit.

The evidence revealed that there are four battalion chiefs: Jerry Magan, Hampton Cottar, Steve Armstrong and Steve Parker. The four battalion chiefs report to Deputy Chief Wayne Walker.

Three battalion chiefs: Magan, Cottar and Armstrong have employees under their supervision: one lieutenant and two firefighters per shift. They direct the operation of The

Woodlands Fire Department at the shift level. They have exclusive authority to implement personnel policies and procedures and to enforce them. They are responsible for overseeing the four fire stations and 41 employees by ensuring that proper classifications are in place at each station and that all men are certified to provide emergency medical services in addition to fire fighting abilities. They assign employees to various areas of work. They take command at incidents such as structure fires and direct the employees assigned in those areas.

Each battalion chief is responsible for ensuring that sufficient manpower is available to man shifts. If an employee calls in sick or on other leave, the battalion chief has exclusive authority to call in a replacement and assign them to specialty areas. Thus, while the battalion chiefs do not establish wage rates for employees, they have exclusive authority to grant overtime when they call in employees to man the facility.

The evidence revealed that unlike the other battalion chiefs who direct the flow of work at the stations, Parker directs the training activities for The Woodlands Fire Department and thus supervises no employees directly. In his training capacity he works a 40-hour week while the other three battalion chiefs work three 24-hour shifts. Parker's duties entail scheduling training. He coordinates special teams and serves as the emergency medical technicians training coordinator, interacting with the hospital district and assisting with training the EMTs and paramedics.

The record revealed that the battalion chiefs earn approximately 25 to 30% more pay than the fire fighters and 10% more pay than the lieutenants. Further, all employees, including the chief and battalion chiefs receive the same benefits, including medical, sick leave and holidays, except that the Fire Chief provided his own vehicle. The battalion chiefs also attend command staff meetings. Further, up until July 1, 1999 the battalion chiefs were classified and paid as salaried employees and received overtime when they worked beyond 40 hours per week. Effective July 1, 1999 the battalion chiefs were reclassified as exempt employees and no longer receive overtime. They now receive an additional 9% pay in lieu of overtime benefits.

The evidence revealed that while the lieutenants draft the employee evaluations, they meet and discuss the evaluations with the battalion chiefs, who have also observed the fire fighters' work during the appraisal period. The battalion chief then signs the evaluation. In addition, the battalion chief prepares and signs the lieutenants' evaluations. The record testimony revealed that the battalion chiefs also have exclusive authority to administer progressive discipline to employees for poor work performance, the first step being a counseling session.

The job description of the battalion chiefs was introduced into the record. The document dated November 1996 states in pertinent part that the battalion chiefs manage a shift within the Operations division of the department and provide leadership and direction to the shift through Lieutenants and Master Firefighters. Their duties include: supervising and enforcing safety procedures at all emergency operations; assigning firefighters to special tasks, rescues, and haz-mat operations; providing management and leadership to

shift personnel; managing internal relations and personnel issues; evaluating work performance and providing developmental coaching for staff; developing daily planning for the shift and making recommendations to deputy chiefs; and supervising established shift procedures and shift employees' off time.

There is no history of collective bargaining at this facility and no labor organization seeks to represent a broader unit than the one sought herein.

The National Labor Relations Act defines a supervisor in Section 2(11) as:

...any individual having authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly direct them or to adjust their grievances, or effectively to recommend such action, if in conjunction with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The Employer contends that the battalion chiefs are statutory supervisors because they possess the necessary authority to effectively recommend hiring, to responsibly direct and assign work, to assign overtime, to evaluate employees and to administer discipline. The Petitioner maintains that the battalion chiefs do not possess sufficient supervisory indicia which would establish that they are statutory supervisors.

The exercise of authority requiring independent judgment with respect to any one of the actions specified in Section 2(11) is sufficient to confer supervisory status.

The battalion chiefs exercise independent judgment in matters that affect employees' pay or other terms and conditions of employment. Thus, when there is insufficient manpower, the battalion chief calls in employees to work, thus awarding overtime. In addition, the battalion chiefs sign off on all subordinates' evaluations without prior approval from upper management. See *Harbor City Volunteer Ambulance Squad, Inc.*, 318 NLRB 764 (1995).

In addition to the aforementioned duties, one battalion chief serves as trainer, which duties are held by none of the rank and file employees and which training is necessary to carry out the mission of the company. Thus, the fact that one battalion chief serves as trainer does not remove him from the ambit of supervisory indicia. *Lasar Tool, Inc.*, 320 NLRB 105 (1995).

Other evidence demonstrating supervisory indicia is revealed by the battalion chief's authority to call in employees to fill the shifts without prior authority from upper management. In addition, the battalion chief's direction of the employee's work is more

than routine in nature. Thus, the record revealed that the battalion chiefs must assess certain fire conditions and decide what course of action the crew is to take. In addition, the battalion chiefs are paid 10% to 30% more than the employees whom they supervise. If an employee does not appear to be performing adequately, the battalion chief has the exclusive authority to admonish him starting with a verbal counseling. In addition, the above evidence demonstrating that the battalion chiefs possess supervisory authority is consistent with their job description which was prepared in 1996.

The record evidence establishes that the battalion chiefs possess several of the indicia set forth in Section 2(11) of the Act such as would deem them supervisors within the meaning of Section 2(11) of the Act. Accordingly, I find the battalion chiefs to be supervisors within the meaning of Section 2(11) of the Act and exclude them from the unit found appropriate herein.

6. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

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